

Karen E. Clarke
PROSKAUER ROSE LLP
One Newark Center, 18th Floor
Newark, NJ 07102-5211
973-374-3200
- and -
1585 Broadway
New York, NY 10036-8299
212-969-3000
Attorneys for Defendants

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

IN RE BED BATH & BEYOND INC.
DERIVATIVE LITIGATION

No. 06-cv-5107-JAP-TJB
(Derivative Action)

Motion Date: _____, 2007

Oral Argument Requested

NOTICE OF MOTION

TO:

Nancy Hart-Esposito
KEARNEY & SCHWEITZER
210 White Horse Pike
P.O. Box 279
Haddon Heights, NJ 08035

Jeffrey P. Fink
ROBBINS UMEDA & FINK, LLP
610 West Ash Street, Suite 1800
San Diego, CA 92101

Kip B. Shuman
SHUMAN & BERENS LLP
801 East 17th Avenue
Denver, CO 80218

Attorneys for Plaintiff

PLEASE TAKE NOTICE that the undersigned attorneys for nominal defendant Bed Bath & Beyond Inc. ("BBB" or "the Company") and the 19 individual defendants (together, "Defendants") shall move before the United States District Court, District of New Jersey, at the Clarkson S. Fisher Bldg. & U.S. Courthouse, 402 East State Street, Trenton, NJ 08608, on _____, 2007 at _____ a.m./p.m. (such date and time as is set by the Court), for an Order pursuant to Fed. R. Civ. P. 12(b)(6) dismissing the Verified Consolidated Shareholder Derivative Complaint (the "Complaint") of Richard A. Feller, with prejudice, on the ground of collateral estoppel and *res judicata*, and granting such other relief as the Court may deem just and proper.

PLEASE TAKE FURTHER NOTICE that in support of this motion Defendants will rely on the accompanying Memorandum of Law, the Affidavit of David M. Lederkramer, and the exhibits thereto.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Court's Order dated June 12, 2007, plaintiff will serve opposition papers by e-filing by July 9, 2007, and defendants will serve reply papers by e-filing by July 18, 2007.

PLEASE TAKE FURTHER NOTICE that oral argument is requested.

A proposed form of Order is submitted herewith.

Dated: June 20, 2007

PROSKAUER ROSE LLP



David M. Lederkramer

Karen E. Clarke (admitted in D.N.J.)

John H. Snyder

One Newark Center, 18th Floor

Newark, NJ 07102-5211

973-374-3200

- and -

1585 Broadway
New York, NY 10036-8299
212-969-3000

Counsel for All Defendants

- and -

Michael B. Himmel
Matthew M. Oliver
LOWENSTEIN SANDLER PC
65 Livingston Avenue
Roseland, NJ 07068-1791

Co-Counsel for Bed Bath & Beyond Inc.